88-1696

NO.

Supreme Court, U.S.
FILED
APR 19 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

SALES TAX COLLECTOR, ST. CHARLES PARISH, LOUISIANA

Appellee/ Petitioner

versus

WESTSIDE SAND COMPANY, INC.

Appellant/Respondent

Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

---

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23 pp

QUESTIONS PRESENTED

1. Whether the Supreme Court of the State of Louisiana, in denying Certiorari on review of the Court of Appeal, Fifth Circuit, misapplied the Doctrine of Equity under both the United States Constitution (Amendment 14, Section 1) and the Louisiana State Constitution (Article 1, Section 3).

2. Whether petitioner was afforded equity under the Fourteenth Amendment of the United States and Article 1, Section 3 of the Louisiana State Constitution, regarding the ambiguous and erroneous application of Louisiana Revised Statutes 47:302 and local ordinance (St. Charles Parish School Board Sales and Use Tax Ordinance, Section 2.01).

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The petitioner, Westside Sand Company, Inc., prays that a writ of certiorari issue to review the opinions and judgments rendered in these proceedings January 20, 1989 and May 16, 1988.

OPINIONS BELOW

The Supreme Court of Louisiana, unreported, appears at Appendix "A", page 10, infra; the Fifth Circuit Court of Appeal of the State of Louisiana, unreported, appears at Appendix "B", page 11; the opinion of the Fifth Circuit Court of Appeal of the State of Louisiana on rehearing, unreported, appears at Appendix "C", page 21; and the opinion of the Twenty-ninth Judicial District Court for the Parish of St. Charles, State of Louisiana, appears at Appendix "D", page 23.

JURISDICTION

The denial of writs certiorari by the Louisiana Supreme Court was entered on January 20, 1989. This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED
CONSTITUTION OF THE UNITED STATES:

Amendment XIV, Sec. 1, "...nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law."

LOUISIANA STATE CONSTITUTION:

Article 1, Sec. 3, "No person shall be denied the equal protection of the laws."

STATEMENT OF THE CASE

Westside Sand Company, Inc. (hereinafter referred to as Westside) had a royalty lease with the landowner to load and remove onto trucks batture sand and pump sand, on the right descending bank of the Mississippi River, a navigable waterway, in the unincorporated town of Hahnville, St. Charles Parish, Louisiana. Westside paid the landowner a royalty of 25 cents per cubic yard for the removal of batture sand and 10 cents per cubic yard for the removal of pump sand.

Westside also paid T. L. James Company a service charge to pump

sand from the bottom of the Mississippi River onto its bank. A Louisiana severance tax and a Wildlife and Fisheries royalty tax of a total of approximately 27 2/3 cents per cubic yard for pump sand loaded onto trucks, was paid by Westside to the T. L. James Company, which paid the above referred Louisiana severance tax and Wildlife and Fisheries royalty tax to the State of Louisiana.

The Sales Tax Collector for the Parish of St. Charles, State of Louisiana, brought suit to prohibit defendant from further pursuit of the above described business in St. Charles Parish unless and until a sales tax was paid on the same sand, under the local sales tax ordinance.

The items sought to be taxed by petitioner are batture sand and pump sand. The batture sand is alluvion sand formed from the trapping of Mississippi River waters on the batture land area. Further, the pump sand is pumped from the bottom of the Mississippi River onto its bank on the batture. The batture and pump sand is then loaded onto various trucks which then haul away the sand to be used in filling lots to build homes upon and under roads to construct state highways and roads.

Plaintiff's suit is based upon the premise that immovables, minerals and natural resources such as batture sand and pump sand are subject to sales tax.

Defendant takes the position that there are no laws or cases in Louisiana to authorize the charging of sales tax on immovables, minerals and natural resources; that the term "tangible personal property" must be interpreted *"for tax purposes"* in the generally thought of common law term which is more favorable to the taxpayer and against the tax collector.

The district court, Honorable Ruche J. Marino presiding, ruled in favor of the defendant, Westside Sand Company, Inc., and ordered that the rule be dismissed. From that judgment the plaintiff appealed.

The Fifth Circuit Court of Appeal reversed the judgment of the trial court. A rehearing was granted, in which the Fifth Circuit reaffirmed its original opinion.

From that judgment of the Fifth Circuit Court of Appeal, defendant applied for a writ of certiorari, or review to the Supreme Court of the State of Louisiana, which court denied the writ. From that decision, petitioner has applied for this writ of certiorari, or review.

REASONS FOR GRANTING THE WRIT

The decisions below directly relate to the principle of equal protec

tion of the laws under the provisions of the Fourteenth Amendment to the Constitution of the United States, Section 1, as well as to the provisions of the Constitution of the State of Louisiana, Article 1, Section 3.

The Supreme Court of the State of Louisiana has held in multiple decisions rendered, that "for tax purposes" any interpretation of the tax code shall be against the tax collector and in favor of the taxpayer. (Emphasis ours).

Petitioner, Westside Sand Co., Inc., contends that the well established rule of statutory construction is that tax laws are interpreted liberally in favor of the taxpayer and all doubts or ambiguities are construed against the state and in favor of the taxpayer. ***State v. Standard Oil Company of Louisiana,*** 188 La. 978, 178 So. 601 (1937);
Danna v. Commissioner of Insurance, 228 So2d 708 (La. App. 1st Cir. 1969); ***Agerton v. City of Lake Charles,*** 273 So2d 353 (La. App. 3rd Cir. 1973), writ denied, 275 So2d 870.

However, if the act be susceptible of more than one reasonable interpretation, the one least onerous to the taxpayer must be adopted. The appellate Court even acknowledged in its decision that the general understanding of the term "tangible personal property" is understood to be in the common law sense, which is favorable to the tax payer and against the tax collector. Therefore, according to the multitude of the Louisiana Supreme Court decisions, the interpretation of the tax law's wording *must* be interpreted against the tax collector and in favor of the tax payer. However, the Louisiana Court of Appeal interpreted the wording of the tax law in favor of the tax collector and against the tax payer, in violation of the United States Constitution and the Louisiana State Constitution. Further, the Louisiana courts have consistently held: "If the act be susceptible of more than one reasonable interpretation, the one least onerous to the taxpayer must be adopted". ***Barber Asphalt Paving Company v. Watt,*** 51 La.Ann. 1345, 26 So. 70; ***Town of Minden v. Glass,*** 132 La. 927, 61 So. 874; ***State v. State Agricultural Credit Corporation,*** 176 La. 590, 146 So. 159; ***United States v. Merriam,*** 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547; ***Gould v. Gould,*** 245 U.S. 151, 38 S.Ct. 53, 62 L.Ed. 211; ***Crooks v. Harrelson,*** 282 U.S. 55, 51 S.Ct. 49, 75 L.Ed. 156; ***Miller v. Standard Nut Margarine Company,*** 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed. 422.

In the case of ***U. S. v. 145.30 Acres of Land, More or Less, In Ouachita Parish, State of La.,*** D.C.1974, 385 F.Supp. 699, the Court held that a "Sand Purchase Contract," whereby the owner granted the sand company the exclusive right to remove sand during a specified period for a stated consideration, created a mineral right in favor of the sand company under Louisiana

law, and consequently, when the United States exercised its power of eminent domain and ordered the sand company to halt sand removal operations on property taken, it did not frustrate merely a personal contract between two parties, but rather deprived the sand company of a real right, an interest in property, and the sand company would be entitled to compensation if it could adequately prove the value of the real right taken.

Likewise, in the case at bar, the sand company, with a royalty lease, has a real right, which, under Louisiana law, is classed as an immovable.

The Fifth Circuit Court of Appeal, in its decision (Appendix "B", page 16 of this brief), stated:

> "Although `tangible personal property' is generally thought of as a common law term, we are of the opinion that our legislature did not intend to import the common law into Louisiana, but rather they intended that this term should be defined in accordance with the general property law of Louisiana."

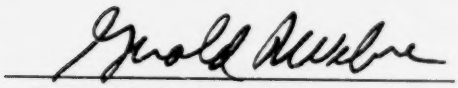
This is a definite indication that the term "tangible personal property" is ambiguous and subject to interpretation, and, as we have stated above, (page 5 of this brief), "if the act be susceptible of more than one reasonable interpretation, the one least onerous to the taxpayer must be adopted."

The interpretation taken by the appellate court in this case violates the constitutional right of "equal protection under the law" of the United States Constitution as well as the same right under the Louisiana State Constitution. The decision in this case to date runs against and in the face of the multitude of above cited decisions of the Louisiana Supreme Court ruling against the tax collector and in favor of the taxpayer, in the interpretation for tax purposes of any doubtful and ambiguous terms. This is therefore also in violation of the constitutional right of "equal protection under the laws" of the Fourteenth Amendment to the United States Constitution, and to the same right under the Louisiana State Constitution. The Court is denying equal protection to this taxpayer, as opposed to what it has established as law in the multitude of cases previously decided.

CONCLUSION

For the above stated reasons, a writ of certiorari should issue to review the denial of writ by The Supreme Court of the State of Louisiana, unreported, appearing at Appendix A *supra*, and to review the judgment and reasons for judgment of the Fifth Circuit Court of Appeal, State of Louisiana, unreported, appearing at Appendix B *supra*.

Respectfully submitted,



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AFFIDAVIT

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, a Notary Public in and for the aforesaid Parish and State, duly commissioned and qualified, personally came and appeared:

GERALD P. WEBRE,

who, after being by me first duly sworn, did depose and say:

That he is the attorney for petitioner, and that he has mailed three (3) copies of the Writ of Certiorari to the United States Supreme Court in the United States mail on this 18th day of April, 1989 to:

ROBERT L. HAMMONDS, ESQ.
Attorney for Defendant
WARD AND HAMMONDS
1111 South Foster Drive, Suite C
Baton Rouge, Louisiana 70806

Witnesses:

Barbara Journine Gerald P. Webre

GERALD P. WEBRE

Josephine F. Webre

SWORN TO AND SUBSCRIBED before me, Notary Public, this 18th day of April, 1989.

John F. Meyer

JOHN F. MEYER
NOTARY PUBLIC

APPENDIX "A"

THE SUPREME COURT OF THE STATE OF LOUISIANA

SALES TAX COLLECTOR, ST. CHARLES
PARISH, LOUISIANA

VS. NO. 88-C - 3015

WESTSIDE SAND CO., INC.

IN RE: Westside Sand Co., Inc.; - Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fifth Circuit, Number 87-CA-0845; Parish of St. Charles 29th Judicial District Court Div. "C", Number 30,441

January 20, 1989

Denied.

JAD
WFM
JLD
JCW
HTL
LFC

Supreme Court of Louisiana
January 20, 1989

/s/
Deputy Clerk of Court
For the Court

APPENDIX "B"

SALES TAX COLLECTOR, ST. CHARLES PARISH, LOUISIANA

VERSUS

WESTSIDE SAND CO., INC.

NO. 87-CA-845

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM
THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 30,441 - DIVISION "C"
HONORABLE RUCHE J. MARINO, JUDGE

FRED S. BOWES
JUDGE

MAY 16, 1988

(Court composed of Judges Fred S. Bowes, Charles Grisbaum, Jr. and Sol Gothard)

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REVERSED AND RENDERED

Appellant, Sales Tax Collector, St. Charles Parish (hereinafter Tax Collector) appeals the judgment of the trial court which held that sand pumped from the Mississippi River is not subject to the sales tax provisions of Louisiana and St. Charles Parish sales tax laws. We reverse.

No evidentiary hearing was held in the instant case, although the court was requested and urged by plaintiff to do so. Therefore, the facts that were made available to this court are minimal. As gleaned from the record, the Tax Collector determined that Westside Sand Company, Inc. (hereinafter Westside) was not paying sales tax for sand pumped from the river in St. Charles Parish, and sold at retail. Westside refused to permit any inspection of its books by the Tax Collector, based on the premise that the sand that was sold was not subject to the sales tax laws. Pursuant to this investigation, the Tax Collector filed a Petition for a Writ of Distraint and Order Reqiring [sic] Dealer to Permit Examination of Business Records. There seems to be a disagreement between the attorneys as to whether a valid written stipulation was entered into (we find none filed in the record), but a hearing was held at which the parties agreed that the primary issue would be the taxability of the sand and, on pp. 62 and 63, the parties entered into the following agreement:

> MR. HAMMONDS:
>
> Mr. Webre and I agree that Your Honor is going to need a brief on this question and that the primary issue will be the taxability of the sand. We'd like to avoid the necessity of coming back in the event you should hold it taxable and

> having to have an evidentiary hearing on the amount of the assessment, so what we have agreed to do is to stipulate that in the event that Your Honor should rule that the sand is taxable, that judgment could be rendered against the defendant in the amount prayed for in the rule, that being $534.17, plus interest at the rate of 12% from the date of the assessment, October 31, 1984, until the date that it's paid and that Westside Sand Company at that time will make available to the tax collector its sales tickets and invoices showing the amounts of sand that it has sold in St. Charles Parish.
>
> THE COURT:
>
> Okay.

MR. WEBRE:

> One more thing, Your Honor. That's paid under protest and we will appeal that, that amount. But in order to save him from coming from Baton Rouge to come back and argue it, we'll agree to have a judgment for that amount and appeal it and pay it under protest.

THE COURT:

> Okay. So what we need is a brief saying whether or not the sales tax is due and owing and whether or not the sand is taxable and the type of sand that we have, the questions that we have.

The trial judge ordered that the matter be submitted on briefs by both parties. The trial judge rendered an opinion, of less than one page, prior to the rendition of a judgment, in which he adopted the brief submitted by the defendant, Westside, as his reasons for judgment, thus reasoning (apparently) that sand, even removed from its natural source, is not subject to the sales tax laws. Subsequently, the trial judge rendered judgment which ordered the Tax Collector's rule be dismissed.

On appeal, appellant, Tax Collector, presents three assignments of error:

> (1)The trial court erred in its conclusion that the sale of sand could not, under any set of circumstances, be considered to be the sale of "tangible personal property" and be subject to a levy of sales tax.
>
> (2)The trial court erred in dismissing the Petition for a Writ of Distraint filed by the Collector without conducting an evidentiary hearing, which would have given the Collector an opportunity to present evidence to the Court demonstrating that the river sand or pump sand in question was not an 'integral part of the land' so as to become a component part of it. The trial court also erred in reaching factual conclusions in the absence of an evidentiary hearing, and, which were not supported by evidence or argument.
>
> (3)The trial court erred in dismissing the Collector's request

for an order requiring Westside to make its records available for inspection and audit.

ASSIGNMENT OF ERROR NO. 1

Appellant argues that sand removed from its natural source is a tangible personal property subject to the sales tax laws of Louisiana. Appellee takes the position that there are no laws or cases in Louisiana to authorize the charging of sales tax on such soil. Appellee buttresses his argument with pertinent sections of the Mineral Code - LSA R.S. 31.1 et seq. Specifically:

L.S.A. R.S. 31.4

4. Substances to which Code applicable

The provisions of this Code are applicable to all forms of minerals, including oil and gas. They are also applicable to rights to explore for or mine or remove from land the soil itself, gravel, shells, subterranean water, or other substances occurring naturally in or as a part of the soil or geological formations on or unlying the land.

L.S.A. R.S. 31.18

18. Nature of mineral rights

A mineral right is an incorporeal immovable. It is alienable and heritable. The situs of a mineral right is the parish or parishes in which the land burdened is located. All sales, contracts, and judgments affecting mineral rights are subject to the laws of registry.

By such arguments, the appellee is claiming an exemption to the sales tax laws of the state of Louisiana and the parish of St. Charles. However, the law is clear that exemptions from taxation are to be strictly construed and affirmatively established. *Vulcan Foundry, Inc. v. McNamara,* 414 So.2d 1193 (La. 1981); *McNamara v. George Engine Company, Inc.,* ____ So.2d. ____(La. App. 5 Cir. 1988) slip opinion 87-CA-539. Any plausible doubt as to the exemption is fatal. *Cajun Elec. Power Co-op., Inc. v. McNamara,* 452 So.2d 212 (La. App. 1 Cir. 1984) writ denied 458 So.2d 123 (La. 1984); *A & P Boat Rentals, Inc. v. Cronvich,* 361 So.2d 1260 (La. App. 1 Cir. 1978) writ denied 363 So.2d 923 (La. 1978).

Consequently, the appellee must show that sales tax cannot be

charged on any soil once it is removed from its natural source. We find such is not the case. We reach this decision after extensive research which reveals that there are no cases specifically on point. Therefore, we are required to make our own determination by interpreting the applicable law.

LSA R.S. 47:301 et seq. is that portion of the statutes that regulate sales tax. LSA 47:301 (16) provides a very broad definition of tangible personal property that is subject to the sales tax laws:

> **(16)** "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, or other obligations or securities.

Although "tangible personal property" is generally thought of as a common law term, we are of the opinion that our legislature did not intend to import the common law into Louisiana, but rather they intended that this term should be defined in accordance with the general property law of Louisiana. See *Exxon Corp. v. Traigle*, 353 So.2d 314 (La. App. 1 Cir. 1977) writ refused 354 So.2d 1385 (La. 1978). Thus, "tangible personal property" is akin to the definition of corporeal movables in the Civil Code. LSA C.C. Arts. 461 and 471 et seq. *St. John the Baptist P.S.B. v. Marbury-Pattillo C. Co.*, 259 La. 1133, 254 So.2d 607 (La. 1971); *American Sign & Ind. Corp. v. City of Lake Charles*, 320 So.2d 234 (La. App. 3 Cir. 1975).

Having concluded that "tangible personal property" is analogous to corporeal movables, we must next determine if sand, once removed from its natural source, remains an immovable or becomes, from a legal point of view, a movable. Whether we utilize the Civil Code or the Mineral Code, we are left with no other conclusion but that, once removed from its natural source, sand becomes a corporeal movable.

1

LSA C.C. art. 468, in pertinent part, states:

> In the absence of rights of third persons, the owner may deimmobilize things *by detachment or removal.* [emphasis added]

Thus, according to the Civil Code, once the sand is removed from its natural source, it does, in fact, become deimmobilized.

We are further guided by the Mineral Code. LSA R.S. 31.5 states:

> Ownership of land includes all minerals occurring naturally in a solid state. Solid minerals are insusceptible of ownership apart from the land until reduced to possession.

LSA R.S. 31:7 provides the definition for when minerals are reduced to possession:

> Minerals are reduced to possession when they are under physical control that permits delivery to another.

The Comments immediately following LSA R.S. 31:7 state in pertinent part:

> In the case of solid minerals, the landowner is regarded by Article 5 as the owner of such substances, but vesting of *possession will still determine when minerals extracted become subject to the law of movables.* As to others than the landowner, vesting of possession will have the dual effect of making the vesting of title *and mobilization.* [emphasis added]

Consequently, in the instant case, although the right to mine for minerals is considered an immovable (LSA R.S. 31:18), once the sand is mined and the sand is in a state which permits delivery to Westside, possession takes place, and the sand becomes a movable subject to the sales tax laws of this state and St. Charles Parish.

Further, in argument before the trial judge, defendant's counsel stated that severance taxes had been paid on all of the sand in question. The definition of severance was provided in *Traigle v. Lafayette Airport Commission,* 309 So.2d 904 (La. App. 3 Cir. 1975), quoting from regulations entitled "Severance Tax Regulation of Timber, Pulpwood and Minerals Other Than Gas and Oil", wherein the court stated:

[1]Art. 468. Deimmobilization

Component parts of an immovable so damaged or deteriorated that they can no longer serve the use of lands or buildings are deimmobilized.

The owner may deimmobilize the component parts of an immovable by an act translative of ownership and delivery to acquirers in good faith.

In the absence of rights of third persons, the owner may deimmobilize things by detachment or removal.

> 'Severance' means the separation of the natural resources from the soil or water, or its removal from its natural position. *For example, the dredging of sand from a river,* the cutting of timber, the mining or removal of a mineral from its natural location. Severance does not refer to the refinement of a natural resource after its removal. [emphasis supplied]

Once the sand is severed from its natural position, it logically follows, and we hold, that it then becomes a corporeal movable or tangible personal property of the one who severs it. Westside cites *Landry v. LeBlanc*, 416 So.2d 247 (La. App. 3 Cir. 1982) for the proposition that an owner's topsoil did not become movable by its placement in trucks to be hauled away. That case is easily distinguishable from the instant case. *Landry, supra*, involved a verbal form lease of property where the lessee contracted to have the sand removed to improve drainage. The court held that, as the form of the property involved was part of an immovable, any transfer of ownership was required to be in writing. In other words, the lessee had no right to remove the topsoil without the express written permission of the owner.

We find that Westside did not meet the stringent burden of proof established in *Vulcan Foundry, Inc. v. McNamara, supra,* and we disagree with their argument that, under the Mineral Code, sand, even that which is removed from its natural source, remains an immovable. We find this view to be fallacious and illogical. Therefore, we are of the opinion that the trial judge committed manifest error in determining otherwise, and the above cited stipulation agreed upon by the parties at the hearing is now effective. Accordingly, Westside is ordered to pay the Tax Collector $534.17, plus interest at the rate of 12% from the date of assessment, October 31, 1984, until paid.

ASSIGNMENT OF ERROR NO. 2

In view of the agreement entered into the record by the attorneys (referred to above), and our finding and holding in this case, this assignment of error has become moot and need not be addressed.

ASSIGNMENT OF ERROR NO. 3

Since we find sand is subject to the tax laws of the state and parish,

Westside is ordered to allow the plaintiff Tax Collector full and complete inspection of its records to the fullest extent provided by the law. See LSA R.S. 47:309; ST. CHARLES SALES AND USE TAX ORDINANCE adopted May 23, 1978, specifically Sections 7.01, 7.02, 7.03, 7.04, 7.08(3), 7.08(4) and 9.11, but including any other applicable laws. Additionally, we have already noted that, in the agreement referred to above, Westside agreed to make available its sales tickets and invoices if it was determined that the sand was taxable.

Accordingly, for the reasons stated, the judgment of the trial court is reversed and judgment is now rendered in favor of the plaintiff Tax Collector and against Westside for $534.17, plus interest thereon at the rate of 12% from October 31, 1984 until paid, and for all costs of all proceedings in the district court, as well as this court. Additionally, Westside shall allow inspection of its books and records pursuant to the applicable tax laws of the State of Louisiana and the Parish of St. Charles.

REVERSED AND RENDERED

APPENDIX "C"

SALES TAX COLLECTOR,
ST. CHARLES PARISH, LOUISIANA

VERSUS

WESTSIDE SAND CO., INC.

NO. 87-CA-845

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM THE
TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 30,441 - DIVISION "C"
HONORABLE RUCHE J. MARINO, JUDGE

FRED S. BOWES
JUDGE

NOV 16, 1988

(ON REHEARING)

(Court composed of Judges Fred S. Bowes, Charles Grisbaum, Jr. and Sol Gothard)

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Attorney for Defendant-Appellee

REVERSED AND RENDERED

After consideration of the arguments presented on rehearing, we reaffirm our original opinion.

(initialed)

(FB)

(CG)

(SG)

APPENDIX "D"

SALES TAX COLLECTOR, ST. CHARLES PARISH, LOUISIANA — NO. 30,441 DIVISION "C"

29TH JUDICIAL DISTRICT COURT

VERSUS — PARISH OF ST. CHARLES

WESTSIDE SAND COMPANY, INC.

STATE OF LOUISIANA

FILED: *September 25, 1987* DEP.CLERK: *Betty S.Burlesen/s/*

OPINION

The case at bar is an attempt by a petitioner to tax the property of an owner under its local sales tax ordinance.

The land in question is on the right descending bank of the Mississippi River, a navigable waterway, in the unincorporated town of Hahnville, St. Charles Parish, Louisiana.

The item sought to be taxed by petition is sand. This sand is alluvion sand formed from the trapping of Mississippi River waters in large pits. These pits are then drained, and the sand therein is sold to various purchasers. Is this sand subject to sales taxes?

I adopt the well-written brief filed by Gerald P. Webre, Esq., as my reasons for judgment. For the reasons stated therein, a judgment commensurate with this opinion will be filed.

THUS DONE AND SIGNED at Hahnville, St. Charles Parish, Louisiana, this 25th day of September, 1987.

/S/ Ruche J. Marino
RUCHE J. MARINO, DISTRICT JUDGE

A TRUE COPY

/S/Betty S. Burlesen
CLERK OF COURT
29TH JUDICIAL DIST. COURT
PARISH OF ST. CHARLES, LA.

APPENDIX "E"

SALES TAX COLLECTOR, ST. CHARLES PARISH, LOUISIANA — NO. 30,441 DIVISION "C"

29TH JUDICIAL DISTRICT COURT

VERSUS — PARISH OF ST. CHARLES

WESTSIDE SAND COMPANY, INC.

STATE OF LOUISIANA

FILED: *October 1, 1987* — DEP.CLERK: Betty S. Burlesen/s/

JUDGMENT

The rule taken by the plaintiff herein for an order of distringas came to be tried;

PRESENT:

ROBERT L. HAMMONDS, ESQ.
Attorney for Plaintiff

GERALD P. WEBRE, ESQ.
Attorney for Defendant

The Court having heard the pleadings and evidence and the argument of counsel, and considering the law and the evidence to be in favor of defendant in rule;

IT IS ORDERED by the Court that the rule be dismissed.

JUDGMENT RENDERED AND SIGNED at Hahnville, St. Charles Parish, Louisiana, this 15th day of October, 1987.

/s/ Ruche J. Marino
RUCHE J. MARINO, DISTRICT JUDGE

A TRUE COPY

/S/ Betty S. Burlesen
Dep. Clerk of Court
29th Judicial Dist.Court
St. Charles Parish, La.